

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

Case No. A-5497

PETITION OF LILIAN V. WEST  
(Hearing held January 24, 2001)

OPINION OF THE BOARD  
(Effective date of Opinion, February 27, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2) and 59-C-1.323(b)(1). The petitioners propose to construct: a screened porch that requires a 1.13 foot variance as it is within 18.67 feet of the rear lot line, the required setback is twenty (20) feet; and a two-story addition that requires a 1.50 foot variance as it is within 5.50 feet of the side lot line, the required setback is seven (7) feet.

Lilian and David West, property owners, attended the public hearing and were accompanied by Stephen D. O'Neill, the petitioners' architect.

The subject property is Lot 2, Block 38D, located at 7219 Minter Place, Takoma Park, Maryland, in the R-60 Zone (Tax Account No. 03163821).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a screened porch in the northern rear yard and a two-story addition in the northwestern side yard.
2. Mr. O'Neill testified that the petitioners' house is an existing non-complying structure that was built in 1949. The residence is currently located in the western side yard setback. The typical required side yard setback for an R-60 zoned lot is 8 feet. Mr. O'Neill testified that the required side yard setback for the petitioners' property is 7 feet because of the date of the lot's recordation.
3. Mr. O'Neill testified that the lot is unusually shaped with an angled rear lot line and that the property is the smallest and shallowest lot on the petitioners' street.
4. Mr. O'Neill testified that that proposed construction would expand the first floor kitchen and the second floor bathroom. The proposed construction for the two-story addition would follow the existing building lines of the house. The amount of variance requested for the screened porch diminishes from east to west. Mr. O'Neill testified that the proposed construction be would architecturally integrated with the existing residence.

5. The petitioners testified that an existing shed on the property had been replaced because of termite damage and that the replaced shed was moved inward on the lot away from the eastern side yard boundary.
6. The record contains a letter of opposition received from Eric Schaeffer and Lauren Kenworthy, adjoining neighbors on Lot 1, and Lauren Lester, an adjoining neighbor on Lot 14. Mr. Schaeffer, Ms. Kenworthy and Ms. Lester state in their letter that they felt that the proposed construction would set a precedent for other home improvements in the neighborhood and would reduce privacy on the neighboring lots.
7. The Schaeffer, Kenworthy and Lester letter further states that the painting of the replaced shed has not been completed and requested that the Board require the painting of the shed as a condition if the variance request were to be granted. The letter listed additional conditions that the neighbors felt should be included if the variance request were to be granted.
8. Mr. West testified that some of the materials from the original shed had been salvaged and used in the reconstruction of the replaced shed. In response to his neighbors' letter of opposition, Mr. West testified that the shed had been painted white to match the side of the fence that was painted white and that the shed had been left unpainted to match the side of the fence that was unpainted. See, Exhibit Nos. 13.b.1, 13.b.3, 13.b.4 and 13.b.5.
9. In response to questions from the Board, Mr. West stated that an updated survey had been ordered and that the survey had not be completed because of the backup that their surveyor was currently experiencing in his workload.
10. Mr. O'Neill testified the petitioners' current addition would be located on the opposite side of the residence that faces the Schaeffer/Kenworthy and Lester properties and would be only minimally visible from the rear yards of those lots.

#### FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

While that Board can consider conditions that would materially impact the adjoining and neighboring properties, and condition variances to minimize the impact on the adjoining and neighboring properties, the Board can only grant variances that meet the requirements set forth in Section 59-G.3.1 of the Montgomery County Zoning Ordinance. Therefore, the Board can not add conditions to a variance request that are unrelated to the land use of the proposed construction.

The Board finds that the unique and unusual shape of the petitioners' lot severely reduces the property's buildable envelope. The Board further finds that the proposed construction could not be located elsewhere on the lot.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions*

1. The Board finds that the variance requested for the screened porch diminishes from east to west because of the property's angled rear lot line and that the requested variance for the a two-story addition follows the original building line of the existing residence. The existing residence is a non-complying structure.

2. The Board finds that the variances requested for the proposed construction are the minimum reasonably necessary to overcome the property's unique conditions and the unusual shape of the lot.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board found several inconsistencies in the letter received from Mr. Shaeffer, Ms. Kenworthy and Ms. Lester and the evidence entered into the record. The Board finds that based upon the testimony and the evidence of record that the proposed construction would not be detrimental to the use and enjoyment of the neighboring properties because of the proposed construction's limited visibility from the neighboring lots.

Accordingly, the requested variances of 1.13 feet from the required twenty (20) foot rear lot line setback for the construction of a screened porch and of 1.50 feet from the required seven (7) foot side lot line setback for the construction of a two-story addition are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(k).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Mindy Pittell Hurwitz and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution.

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Donna L. Barron  
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 27th day of February, 2001

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.